

1886
 HURO
 CHUNDER
 ROY
 v.
 SURNANOYI.

We upon that ground set aside his order rejecting the appeal and remand the case to him to decide that point again.

We may, however, point out that if the facts stated before us are correct, and if the matter had been left to us to decide, we should have been very much inclined to think that the appeal should be allowed to be filed under s. 5. We may here state the facts that have been stated before us. The decree of the lower Court is dated 20th December 1883; the suit was valued at Rs. 18,000, but on the objection of the defendant the Court decided that the value of the subject-matter of the suit was below Rs. 5,000. The appellant applied for copies on the 3rd of February, the decree was ready on the 7th of February; the appellant being then under the impression that the appeal would lie to the High Court. Then on the 16th of March a letter was received from his agent at Calcutta, informing the appellant that he was mistaken, and that an appeal would lie to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

The costs of this hearing will abide the result.

K. C. M.

Case remanded.

CIVIL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Grant.

BHAIRAB CHUNDRA CHOWDHRI (PLAINTIFF) v. ALEK JAN
 (DEFENDANT).*

1886
 April 28.

Stamp Act, 1879, s. 13—Suit on bond—Stamp, Sufficiency of.

A bond stipulated that for the consideration of a loan of Rs. 80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at Rs. 10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris, at 4 arris per rupee, or its price, Rs. 200 :

Held, that the bond was adequately stamped.

THIS was a reference in a suit which was brought to recover 800 arris of grain, or their value at 4 arris per Re. 1. The Munsiff disallowed the claim as to a moiety on the ground that

* Civil Reference No. 5A of 1886, made by Baboo Baroda Prasanna Shome, Subordinate Judge of Chittagong, dated the 10th of February 1886.

the bond had been engrossed on a stamp paper of 8 annas only, and the plaintiff could not, under a bond so stamped, recover more than 400 arris of grain, or their value, Rs. 100. The bond which was dated the 17th Bhadro stipulated that in consideration of a loan of Rs. 80 the defendant should deliver to the plaintiff within the month of Magh 800 arris of grain valued at Rs. 10 per 100 arris. Both the plaintiff and the defendant appealed against the order, the former contending that the bond was sufficiently stamped, and the latter that it was a forgery.

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The Appellate Court was of opinion that the stamp on the bond was insufficient to cover the claim of Rs. 200, and referred the following question to the High Court: Is the bond adequately stamped under the provisions of s. 13, Act I of 1879?

Baboo Akhil Chunder Sen for the appellant.

The decision of the Court (MITTER and GRANT, JJ.) was as follows:—

MITTER, J.—We are of opinion that the Subordinate Judge was not right in holding that the instrument upon which this suit was brought was not properly stamped. The amount secured by the instrument is the value of the paddy agreed to be made over to the creditor, as fixed by the instrument itself. If there be a rise in the price of the paddy at the time of the institution of the suit, it would not make the instrument an instrument which is not sufficiently stamped under the Act. If the view of the Subordinate Judge were correct, it would be impossible for the parties to the document to fix the value or the amount to be secured for the purpose of determining what stamp duty should be paid.

The record will be sent back.

K. C. M.